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IN THE

Supreme Court of the United States

No. 494

PURITAN CHURCH BUILDING FUND, HARRISON PARKER and EDITH S. PARKER, Trustees, *Petitioners*,

v.

UNITED STATES OF AMERICA, ET AL., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PURITAN CHURCH BUILDING FUND,
REV. HARRISON PARKER,
EDITH S. PARKER,
Trustees, Pro Se.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

I.

OPINION BELOW

The per curiam opinion of the United States Court of Appeals for the District of Columbia Circuit (Appendix *infra*, p. 15) is not yet, officially reported.

II.

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1958. The time to petition to this court for

writ of certiorari was enlarged by order of this court dated October 7, 1958 to and including November 9, 1958. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254.

III.

QUESTIONS PRESENTED

—1—

Has the Commissioner of Internal Revenue authority from the Congress of the United States to cancel the right to income tax exemption vested in a religious organization which meets all the requirements of Section 101(6) of the 1939 Internal Revenue Code (Section 6871 of the 1954 Code), has met all the requirements of the Commissioner's "Enforcement Regulations" and all the requirements of the Internal Revenue Code for income tax exemption?

—2—

Has the Tax Court of the United States the jurisdiction to accept a tax litigant's petition for an income tax redetermination, after a receiver has been appointed for the funds of the tax litigant?

IV.

CONSTITUTIONAL PROVISION, STATUTORY PROVISIONS AND FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

7th Amendment

26 U.S.C.A. 501(c) (3)
26 U.S.C.A. 6901
26 U.S.C.A. 6871
26 U.S.C.A. 61

Rule 15 and 56 of the Federal Rules of Civil Procedure.

STATEMENT

—1—

For reasons of its own, the Congress of the United States expressed its will—in the 1939 Internal Revenue Code, as follows:

"Sec. 101 Exemptions from tax on corporations.

The following organizations shall be exempt from taxation under this chapter:

(c) Corporations and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc., no part of which inures to the benefit of any private share holder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise to influence legislation."

Elsewhere in that Code, the Commissioner of Internal Revenue is authorized by the Congress, to make "Enforcement Regulations" to carry out the will of the Congress. To enforce means to execute the law as it is enacted by the Congress: collect taxes where the Congress directs; exempt from taxation where the Congress directs: "shall be exempt" are the positive and unequivocal words of the Congress of the United States in Sec. 101 of the 1939 Internal Revenue Code.

Nowhere in the Internal Revenue Code, nor any where else, is there any authority to the Commissioner to either modify or cancel by "Enforcement Regulations," by assessment or otherwise the income tax exemption granted to religious organizations by the

Congress, by its Section 101(6) of the 1939 Internal Revenue Code.

In its decision dated September 28, 1951, at pages 952 and 957 of the Tax Court record in case numbered 25701, the Tax Court found:

> "Petitioner (meaning the Puritan Church—the Church of America) is a corporation organized under the laws of the State of Illinois. (957) The object of the organization as stated in the by-laws adopted August 17, 1947, is as follows:
>
> 'This organization was founded as a means of disseminating through the U. S. Mails and otherwise, the revelations of God vouchsafed to its members, on religious, educational, political, benevolent, fraternal, charitable and reformatory subjects, the study of which will cause in the individuals who practice them, a mental development. along scientific lines.
>
> In addition to promoting the above idea, the objects of this society, are to promote unqualified allegiance to the general government, protect the rights and liberties of American citizenship, and maintain national honor, union, and independance.'" (957).

CLAUDE H. HILL was called as a witess by and on behalf of the respondent, and, having been first duly sworn was examined and testified as follows:

> "I am an auditor in charge of the corporation section office of the Collector of Internal Revenue, First District of Illinois—(tr page 225); I have examined its records and found that the Puritan Church—the Church of America, filed with the Collector of Internal Revenue at Chicago, on April 19, 1950, the income tax exemption certificate in complete accordance with the form required by our department" (tr pages 227-228).

The "income tax exemption certificate" referred to in this uncontradicted and undisputed testimony, was a statement under oath, by the trustees of the Puritan Church—the Church of America that it:—

1—was organized—for the purposes named by Congress in Section 101 (6) of the 1939 Internal Revenue Code;

2—that no part of its income inured to the benefit of any private shareholder or individual;

3—that no substantial part of its activities is carrying on propaganda or otherwise influencing legislation.

JOHN W. BURNS was called as a witness by and on behalf of the respondent, and having been first duly sworn was examined--and testified as follows:

"I am the Internal Revenue Agent who investigated this case (the Puritan Church—the Church of America) (tr page 181); I had access to the bank statement of the Puritan Church—the Church of America (tr 194); it showed for the period under investigation, deposits in its bank at Montague, Michigan and at currency exchanges as follows:

$6,500 for period October 14, 1945 to December 1, 1945.

$47,013.54 for the calendar year 1946 (tr page 182);

$201,502.77 for the calendar year of 1947.

$359,094.03 for the period from January 1, 1948 to June 30, 1948: (tr 182, 183, 184)

I used the sum total of these deposits as my adjusted income for the Puritan Church and the deficiency notice in this case (tr 183); yes, the

same bank statement showed steady withdrawals (tr 194); I went to Mr. Looby, assistant U.S.A. Attorney and asked him if he had information about these withdrawals; he had none (tr 198); I could not obtain from Mr. Looby the evidence on which I could allow any deductions from my gross bank deposits assessment (tr 190); in making the jeopardy assessment I was guided by the transfer of approximately $150,000 from the special account at the Montague Bank to the Cos Cob Branch of the Greenwich Trust Company into the account of the Puritan Church Building Fund (tr 204); I had to rely on the gross bank deposits of the Puritan Church for the figures used in my adjusted income and deficiency notice in this case: (tr 189); No I did not ask the bank, if it had any records to show what the withdrawal items on the bank statement were used for (tr 195); the bank does not have access to the cancelled checks; they are the property of the individual (tr 195) (in this case the cancelled checks were the property of the Puritan Church—the Church of America); yes I knew where the office of the Puritan Church was at. La Grange, Ill. (tr 191); I never went there to make any requests for records: (tr 199) I concluded that there would be no point in making a demand for books and records of the Puritan Church (tr 190); for income tax purposes, I could accept the deposit items on the Puritan's Church's bank statement and reject the withdrawal items on the same statement; this I did (tr 189): my job, as I understand it, is to protect the revenue of the government; it is my duty to do so (tr 185)".

By this uncontradicted and undisputed testimony of the agent of the Commissioner of Internal Revenue of the U.S.A., Section 3615 of the 1939 Internal Revenue Code was violated by the Commissioner's agent—, in order to enable the Commissioner to cancel and annul

the income tax exemption granted to the Puritan Church, and tax it with an income tax which would not have been possible had the following law passed by the Congress been observed by the agent of the Commissioner:

(e) *Enforcement.*—Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. (Section 3615, 1939 Internal Revenue Code.)

In *Martin* v. *Chandis Securities Company,* 128 F. 2d 731, 735, the Court said:

> "The rights of an internal revenue agent—to require production of books and records are statutory, and in order to obtain the relief granted by this section and section 3614 of this title, he must bring himself within the terms thereof."

In *Beamsley* v. *Commissioner Internal Revenue,* 205 F. 2d 743-750, the Court said:

> "A study of the record furnishes no reason why the testimony of these witnesses should be cast aside and the case decided upon mere speculation and conjecture."

Upon the first demand ever made by the Commissioner of Internal Revenue to view the books and records of the Puritan Church, all were delivered to the Tax Court in answer to a subœna duces tecum and handed to John W. Burns, while he was on the witness stand. All those books and records were in the undisturbed possession of Mr. Burns and W. A. Schwertfeger, special attorney for the Commissioner, from the close of court on Friday, until the opening of court on the following Monday.

JOHN W. BURNS was called to the stand for further direct examination by the respondent:

"I examined such books and records as the petitioner turned over to me in the court room Friday last (tr. 467); there were books of original entry (tr. 468); detailed ledger sheets; all ledgers in bound form (tr. 469); detailed ledgers for summary purposes (tr. 471); summary sheets for their purpose were bound in ledgers (tr. 470); there were little summary sheets which appeared to be income (tr. 471); miscellaneous papers (tr. 470); pay roll for building funds and other captions (tr. 471); from the books (of the Puritan Church) which are here in the court room I could, if I had sufficient time (tr. 790), make an audit of the Puritan Church from December 1945 to April 7, 1947 (tr. 792)."

When Mr. Burns on the witness stand, made the above confession, he had in his hands the original signed audit in the form of the copy below:

Audit of Puritan Church. Ending 12/31/46

STATEMENT OF INCOME PURITAN CHURCH, 1946.

Month	Account 1.	Account 2.	Account 3.	Christmas Donation
January	$ 418.49	$	$ 35.00	$
February	413.02		183.75	
March	563.76	9.00	308.05	
April	203.55	28.50	277.25	
May	538.10	1.00	332.05	
June	300.65	66.60	405.80	
July	634.90	49.00	569.35	
August	1017.14	252.60	726.05	
September	1147.67	37.55	1020.56	
October	1039.39	125.00	1103.59	
November	760.30	919.60	1436.82	
December	409.78	466.05	1323.93	$ 216.88
TOTALS	$ 7446.75	$ 1954.90	$ 7722.20	$ 216.88

Account 1. Receipts from Advertising—Newspapers Etc.
Account 2. Receipts from Direct Mail.
Account 3. Receipts from Incóme from Lessons.
Account 4. Christmas Donations

STATEMENT OF EXPENDITURES, 1945-1946.

Month	Account 1.	Account 2.	Account 3.	Account 4.
1945	$ 2191.88	$	$ 571.39	$ 512.51
January	1504.47		746.37	493.51
February	2090.72	581.12	1232.63	556.66
March	881.67	856.83	1279.20	1478.36
April	1577.39	39.00	525.65	1103.03
May	265.43	109.88	213.54	1478.36
June	374.86	229.49	602.40	2462.28
July	429.55	586.15	537.86	783.75
August	3229.41	615.51	1743.35	862.34
September	1319.99	708.21	456.11	588.45
October	2398.12	1164.47	1298.79	627.18
November	3188.45	2483.87	1068.78	1275.71
December	2477.27	628.16	395.38	1009.71
TOTALS	$21929.21	$ 8001.69	$10671.45	$13185.07

Account 1. Expenses of Advertising, printing, etc.
Account 2. Expenses of Direct Mail, printing, etc.
Account 3. Expenses of Less[illegible]s.
Account 4. Expenses of overhead, etc.

RECAPITULATION OF THE PURITAN CHURCH

Income and Expenditures Ending Dec. 31, 1946.

Income from account 1.	$ 7446.75
Income from account 2.	$ 1954.90
Income from account 3.	$ 7722.20
Income from account 4.	$ 216.88
*Advances made to the Puritan Church.	$37500.00
TOTAL	$54840.73
Expenditures of Acc't 1.	$21929.21
Expenditures of Acc't 2.	$ 8001.69
Expenditures of Acc't 3.	$10671.45
Expenditures of Acc't 4.	$13185.07
TOTAL	$53787.42

Balance of cash on hand and in the bank 12/31/46. $1053.31

*The monies advanced by individuals are secured by notes. These notes are signed by members of the Board of Trustees of said Church.

Submitted by:
Russell's Accounting & Tax Service.
C. ROBERT RUSSELL
C. Robert Russell

This audit had in it all the information which Mr. Burns had been seeking from everybody, except from the Puritan Church, where it was awaiting the call of any law upholding agent of the government of the U.S.A. (tr 137).

Sec. 3611 of the 1939 Internal Revenue Code:

> "In case no annual list or return has been rendered by such person to the collector or deputy collector as required by law * * * it shall be the duty of such collector or deputy collector to leave at such place of residence or business * * * a note or memorandum addressed to such person requiring him or her to render to such collector or deputy collector the list or return requnred by law" * * *
>
> (A) If any person fails to make and file a return or list at the time prescribed by law * * * the collector or deputy collector shall make the return orlist from his own knowledge and from such information as he can obtain through testimony or otherwise."

When Mr. Burns had in his hands, the certified audit of the Puritan Church, he had in his possession "such information as he can obtain through testimony or otherwise" demanded by the Congress in Section 3611(A) of the 1939 Internal Revenue Code noted above. When he did not use it to modify "from his own knowledge" his previous "100% gross bank deposit" assessment he voided his income tak assessment against an income tax exempt religious organization, voided the following decision of the Tax Court and voided all the 8 years of litigation in which the Commissioner has engaged in an attempt to retain in the U. S. Treasury, the money obtained by Mr. Burns' void assessment:

"Now, therefore, it is

ORDERED and DECIDED: That there are deficiencies in income tax and penalties as follows:

Year	*Deficiency*	*25% Penalty*	*50% Penalty.*
Period Oct. 14, 1945 to Dec. 31, 1945	$ 550.00	$ 137.50	$ 275.00
1946	4,284.95	1,071.24	2,142.48

all of which amounts have been paid by the Puritan Chaurch Building Fund, transferee; that for the calendar year 1947 there are deficiencies in income tax and penalties as follows:

Deficiency	*25% Penalty*	*50% Penalty*
$24,039.27	$6,009.82	$12,019.64

(SIGNED) LUTHER A. JOHNSON
Judge

ENTER:

Entered Sep 28 1951

Served Sep 28 1951

(SEAL)"

In addition to assessing against the Puritan Church an income tax which would not have been legal against a bawdy house whose books and records were always open and available to the Commissioner, the Tax Court in its decision:

(a) Validated the Commissioner's cancellation of the income tax exemption of the Puritan Church which had been annulled by the Commissioner's agent John W. Burns, without a notice, without a hearing and without a trial in a court, where the Churchs' rights could have been defended by the established rules of evidence. (Mr. Burns could not have made his $326,000. income tax assessment against the Puritan Church had he not arbitrarily and capriciously divested that Church of its right to income tax exemption);

(b) upheld the Commissioner's invasion of a religious purpose trust fund in the Greenwich Trust Company, with a "jeopardy assessment," and his seizure there of $106.000. in cash, which had been deposited in the U. S. Treasury two years before the Tax Court determined that the burden of the evidence was not upon the Commissioner to prove fraud for his issue of a "Jeopardy Assessment" to a transferee;

(c) upheld the Commissioner's seizure of the $35,000. free and clear site for a Puritan Meeting House owned in fee simple by the Congregation of the Puritain Church of Washington. D. C., as a $17,500. payment on the $326,000 income tax liability assessed against the Puritan Church—the Church of America, at La Grange. Ill. by the Commissioner;

(d) assumed the power of an equity court and extended the jurisdiction of the Tax Court into the exclusive jurisdiction of those courts, without any authority either from the Congress, or in the Act creating the Tax Court;

(e) determined that the Puritan Church—the Church of America, and the Puritan Church Building Fund, a trust organized under the common law specifically to distribute Bibles free and build a Puritan Meeting House, were one and the same legal entity, subject to income taxes under the provision of Section 101(6) of the 1939 Internal Revenue Code, for failure to meet the requirements of this Section for income tax exemption;

(f) determined that all the money in the Greenwich Trust Company credited to the account of the Puritan Church Building Fund ("earmarked" for distributing Bibles free, and building a Puritan Church), was an asset of the Puritan Church—the Church of America;

(g) determined that all the money in the Greenwich Trust Company credited to the account of the Puritan Church Building Fund could be used as the "down payment" on the $326,000 income tax assessment which had been assessed by the Commissioner of Internal Revenue, against the income tax exempt Puritan Church;

(h) found without a scintilla of evidence in the Court record to sustain the "Findings," that thePuritan Church Building Fund was a transferee of the Puritan Church—the Church of

America which owed $326,000 in income taxes according to the computation of John W. Burns;

(i) found at pages 956 and 957 of the Tax Court record that the Puritan Church—the Church of America had met the requirements of the Congress for income for exemption, and at page 975 of the same court record, found that the Puritan Church—the Church of America "had not met the requirements of the Congress for income tax exemption;

(j) cruelly libeled the Puritan Church and made "Findings of Fact" for which there is not a scintilla of evidence in the Tax Court record, for example: at record pages 973 and 995 in its decision, the Tax Court found:

"Petitioner kept no adequate books nor adequate records."

At tr pages 24, 34 to 39, 45, 46, 137, 189 to 199, 139, 207, 220, 224, 266, 267, 307 to 309, 311, 356 to 359, 360, 451, 468 to 473, 583 to 585, 617 to 632, 673 to 692, 697 to 701, 727 to 729, 790, 791, 857, the testimony by witnesses for both the petitioner and the respondent is undisputed that

The petitioner did keep books and adequate records.

This confusing decision of the Tax Court on matters on which only an equity court has jurisdiction, was appealed for review to the United States Court of Appeals for the District of Columbia Circuit; that Court rid itself of this involved litigation with 37 words, to wit:

"The Tax Court made findings in great detail and rendered a careful opinion. Upon examination of the record we conclude that the findings are supported by ample substantial evidence. We find no error in any other respect."

Certiorari was denied by the Supreme Court of the United States. *Puritan Church of America* v. *Commissioner*, 93 U.S. App. D.C. 129, 209 F. 2d 306, cert. denied, 347 U.S. 975. See also 10 T.C.M. 485.

That decision by the Supreme Court of the United States armed the Commissioner with the defense of res judicata which has been used by him for eight years in the Courts of Washington, D. C., to thwart all efforts by the petitioner to have the seized $106,000 returned to the trust fund in the Greenwich Trust Company, and the building site for a Puritan Church at Washington, D. C., returned to its owner, the Puritan Church of Washington, D. C.

—2—

On November 4, 1949, the Hon. Elmer Snackenberg, Judge of the Circuit Court of Cook County, Illinois, appointed a Receiver for the Puritan Church—the Church of America upon a decree which had been written for him by Howard Ellis, lawyer, who was not a lawyer of record in any of this litigation: Ellis paid John W. Norkett, an employee of the law firm of Kirkland, Fleming, Green, Martin and Ellis to hire five mechanics to donate $75.00 in cash, to the Puritan Church and then sue for and obtain a Receiver in litigation which was conducted for Howard Ellis through all the Courts of Illinois, at an expense to the Chicago Tribune of over $100,000, to recover the $75. donated by Ellis' dummies." (See affidavit in file

320 Miscl. 1958 term of the Supreme Court of the United States)

On November 7, 1949, three days after a receiver for all the assets of the Puritan Church—the Church of America had been appointed, the Puritan Church Building Fund, the petitioner in this litigation, filed in the Tax Court, in case numbered 25701, its petition for a redetermination of the income tax assessment which had been made against it by the decision of the Tax Court. *Covel* v. *Heyman,* 111 U.S. 176; *Perry* v. *Harper* (1957), 307 P. 2nd 168 (Okla.).

For reasons best known to it the Congress enacted the provisions of Section 6871 of the 1954 Code. Indeed, Section 6871 is a re-enactment of Section 282 of the 1926 Internal Revenue Code and Section 274 of the 1939 Code, as amended. Section 6871 bars the filing of a Petition for redetermination in the Tax Court after the appointment of a Receiver for the tax litigant.

The following cases hold that the mere filing of a suit for the appointment of a receiver gives to the court in which the proceeding was filed, constructive possession of all assets mentioned in the proceeding, irrespective of the location of said assets: *The Peale Phelps,* (1852), 55 U.S. 368, *Farmers Loan & Trust Co.* v. *Lake St. Elevated Ry. Co.,* (1900), 177 U.S. 51, *Prince Linda* v. *Thompson,* (1939), 305 U.S. 456, *Palmer* v. *Texas,* (1909), 212 U.S. 118; and *U. S.* v. *Bank of New York,* (1936), 296 U.S. 463.

The Tax Court itself has decided that it has no further jurisdiction to make a redetermination where there has been the appointment of a receiver for the tax litigant or an adjudication in bankruptcy. *Di*

Napoli, etc. v. *C. I. R.*, 1 T.C. 8. See also *Connas* v. *C. I. R.*, (1954), 23 T.C. 8, and *Old Colony Trust Co.* v. *Comm.*, 279 U.S. 716.

The courts have held that as between two courts who have concurrent jurisdiction, the court first acquiring jurisdiction over the "res" involved, may exercise that jurisdiction to the exclusion of the other court until its duty is fully performed and its jurisdiction is exhausted. *American Fire and Casualty Co.* v. *Finn*, 341 U.S. 6, 71 S. Ct. 534; *Gillis et al* v. *Keystone Mutual Casualty Co.*, 6 Cir., 172 F. 2d 826; *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 43 S. Ct. 79; *Covel* v. *Heyman, supra*, and *Perry* v. *Harper, supra*

Section 6871 of the 1954 code, empowers the receiver appointed by the Circuit Court of Cook County for the Puritan Church, to pass upon any claim that the respondent may have had against the petitioner. The following decisions support the position of petitioner in this respect: *Connas, Inc.* v. *C.I.R.*, (1954), 23 T.C. 8, *Old Colony Trust Co.* v. *Comm.*, 279 U.S. 716, 728 and *Clifton City Bank* v. *C.I.R.* (1927), 6 B.T.A. 653, 646.

Thereafter, petitioner sued in the U. S. District Court at Washington, D. C., for the recovery of taxes wrongfully exacted. (App.); thereafter respondent filed its Motion for Summary Judgment. Prior to the hearing on said motion, petitioner filed its motion to amend its complaint by adding thereto two new counts. (App.):

Count two of said proffered amended complaint alleged in substance: (1) jurisdiction, (2) the filing of the 6 months notice in compliance with Section 7422 of the 1954 Code, (3) that the judgment of the

tax court entered September 28, 1951, was void ab initio, as an invasion of Section 6871 of the 1954 Code, (4) that the tax was levied on a void assessment, and (5) a demand for the return of $89,000.00 wrongfully exacted, together with statutory interest.

Count three of the proffered amended complaint alleges in substance, that: (1) The timely filing of claim for refund, (2) the lack of jurisdiction in the tax court over the subject-matter, as an abridgement of the provisions of Section 6871 of the 1954 Code, and (3) demanded judgment for $17,059.09.

The District Court rejected petitioner's motion to amend, and upheld the respondent's defense of res judicata in the Tax Court, by its decision dated September 28, 1951 referred to on pages 13 and 14 hereof.

The United States Court of Appeals for the District of Columbia Circuit, affirmed the action of the District Court, and rid itself of all the undecided law points in this litigation with 13 words, to wit:

> "Per Curiam: The District Court rightly dismissed this action on the ground of res judicata. *Puritan Church of America* v. *Commissioner*, App. Infra. p. 15.

This petition for certiorari is an appeal to the Supreme Court of the United States to bring cosmos out of the chaos created by this opinion of the Court of Appeals, by answering with the law, the two short questions propounded by the petitioner on page 2 of this petition. Both questions were squarely before the U. S. Court of Appeals of the District of Columbia Circuit for answer. For reasons of its own, it

avoided answers and attempted to settle this important litigation with:

> "Per Curiam: The District Court rightly dismissed this action on grounds of res judicata."

The decisions of the lower courts were based upon the doctrine of "res judicata"; neither decision was explicated. There is nothing to be gleaned therefrom, other than the bare conclusion of "res judicata". If the Tax Court had no jurisdiction over the subject matter, the doctrine of "res jurisdiction" is inapplicable: judgment rendered by a court without jurisdiction of the subject matter is void and thereby subject to collateral attack in any court at any time, continues to receive the approval of the courts throughout the land.

This is true whether the jurisdictional question was or was not raised in the trial court and determined by the trial court at the time.

This Court has long since held that where the trial court is without jurisdiction of the subject matter, any judgment rendered by such court is void. *United States* v. *Corrick,* 298 U.S. 435, 440, *United States* v. *Griffin,* 303 U.S. 226, 229, *Kolb* v. *Fevertein,* 308 U.S. 433, and *McGrath* v. *Kristensen,* 340 U.S. 162, 167.

REASONS FOR THE GRANTING OF THE WRIT

(a) At pages 9 and 12 of this petition and in the archives of the Supreme Court of the United States, in file 320 Miscl. October term 1958 there is uncontradicted and undisputed evidence which shows that Howard Ellis, lawyer for Chicago hoodlums, wrote in their offices at 33 N. LaSalle St., Chicago, the decision

of the Tax Court—dated September 28, 1951, in Tax Court case numbered 25701 for the signature of Luther A. Johnson, Judge of the Tax Court, and for the signature of Elmer Snackenberg, Judge of the Circuit Court of Cook County, Illinois, the decree appointing a Receiver for the Puritan Church—the Church of America. (See affidavit in file 320 Miscl. October 1958 term of Supreme Court of the United States).

The courts of the United States are not sacrosanct; they are not free from criticism. When there is extant—as there is in this litigation, evidence which shows that corruption is gradually creeping into the most sacred institution of our government, the outcry of the decent persons of the United States, should be articulate and loud.

If for any reason, the Supreme Court of the United States shall choose not to review and reverse the lower courts for lack of jurisdiction in this litigation, those courts will be without a guardian; life, liberty, property, law and order in the United States will be without a protector.

Then, Howard Ellis lawyer will continue to sabotage the Puritan Church with his champertous litigation and jail for contempt of court, men and women ministers of the Puritan Church who have the vision to descry the ultimate consequences of disrespect to law; then the Peoria hoodlums will continue to dynamite the synogogue of the the Jew; "Specs" O'Keefe's Boston hoodlums will continue to silence their opposition with "Murder Inc"; Johnny Dios' New York City hoodlums will continue to use acid; Fay and Maloney's Philadelphis hoodlums will continue to use "stink bombs"; Frank Costello's "Mafia" hoodlums will continue to use arson and assassination and Johnny

Hoffa's nation-wide hoodlums will continue to use mutilation; then, the existing form of government of the United States of America will lapse into the limbo along with "the glories that once were Greece and Rome." (Should the Supreme Court of the United States determine to appoint a Commissioner to take testimony for the disbarment of hoodlums from the practice of their kind of law in the Courts of the Governments of the United States, the petitioner will deliver to him, irrefragable evidence in writing, on the office forms of the law firm of Kirkland, Fleming, Green, Martin and Ellis, over the signature of Ellis, to prove the above charge against Howard Ellis.)

(b) The jurisdiction of the Commissioner of Internal Revenue over income tax exempt religious organizations has not been defined by any court of competent jurisdiction. Until that jurisdiction shall be defined by this Court, all religious organizations in the United States are existing under the sufferance of a Commissioner's agent armed with a jeopardy assessment.

CONCLUSION

This Court should grant the writ of certiorari prayed for:

(1) the complaint and amended complaints were filed pursuant to Section 6512, 6532, and 7422 of the 1954 Code, and Rule 15 of the Federal Rules of Civil Procedure; their dismissal deprived the petitioner of trial by jury under the 7th Amendment to the Constitution of the United States;

(2) the Tax Court was without jurisdiction to determine the petitioner's redetermination, peti-

tion filed therein three days after the appointment of a receiver to take over its assets;

(3) the doctrine of res judicata, as applied by the Court of Appeals and District Court are inapplicable where the trial court was without jurisdiction of the subject matter;

(4) the Tax Court was without power to annul the right of income tax exemption which was vested in the Puritan Church of America, by the Congress of the U. S. A.

Respectfully submitted,

PURITAN CHURCH BUILDING FUND,

REV. HARRISON PARKER,
EDITH S. PARKER,
Trustees, Pro Se.

APPENDIX

APPENDIX

Record page 989:

"The Puritan Church Building Fund, it is contended by the respondent, is a transferee of the petitioner and that the funds possessed by it are those of the petitioner and subject to the payment of petitioner's tax. * * * Moreover, it is our view that it was not petitioner's intention to build a Puritan Meeting House (R. 991) * * * We can only conclude from this analysis that it was not the intention of petitioner nor were the amounts received by the petitioner regarded as funds impressed with a trust (R. 993) . . . we believe the respondent has met his burden of proving that the Puritan Church Building Fund is a transferee of the petitioner. * * *. We thereupon hold that the Building Fund is liable in an amount not exceed $156,495.29 for the payment of taxes and penalties due from petitioner; (R. 994) * * * respondent properly asserted the liability against the Building Fund as transferee of petitioner" (R. 994). *Puritan Church of America,* 93 U.S. App. D.C. 129, 209 F. 2d 306, cert. denied 347 U.S. 975.

"Nov. 4 Decree * * *

Sixthly, that James E. Kennedy, of Chicago, be and he is hereby appointed Receiver of all assets, property, monies, debts and effects of every nature and kind, of or belonging to said defendants, Harrison Parker and Puritan Church—The Church of America, in order that said Receiver may marshal the same and distribute same to all contestants in said puzzle contest described in the pleadings, proofs, and the report and supplemental report of said Master in Chancery; and said Receiver shall have the usual powers of Receivers in like

cases and he is hereby directed, authorized and empower to collect, get in and take charge of all and singular thereof, and to institute any suit or ancillary proceedings which he may be advised is necessary to follow said trust fund into whatever form and whatever jurisdiction the same may have been transferred by said defendants, and to hold the same subject to the further order of the Court; and it is further ordered:

* * * * * * *

Enter

SCHNACKENBERG
Judge"

Kimbrough v. *Parker et al.*, 344 Ill. App. 483, 101 N.E. 2d 617.

Page 51—Vol. 25701, Office of the Clerk of the Tax Court of the United States, at Washington, D. C.:

"Nov. 7, 1949, Petition received and filed. Taxpayer notified Puritan Church Building Fund, Anita P. Bird and Edith S. Parker Trustees".

Record page 40

Trust Agreement Creating the Puritan Church Building Fund

THIS INDENTURE AND DECLARATION OF TRUST, made this 16th day of March A. D. 1948, by and between HARRISON PARKER of the Village of La Grange, County of Cook and State of Illinois, (the proposer and originator of this Trust, and as such the factor who appoints the Trustees herein named), together with his heirs, executors, administrators and assigns (herein designated as the Grantor), and ANITA BIRD of Cos-Cob, Connecticut, and EDITH S. PARKER, of Los Angeles,

California, together with their successors, (herein designated as Trustees);

WITNESSETH:

WHEREAS the Grantor is the owner of a tract of land located in the Township of Blue Lake, County of Muskegon and State of Michigan, described as Los eighteen (18) in Block twenty-five (25 of the Fruit Valley Addition to Fruitvale; and

WHEREAS, the Grantor proposes to convey said property to the Trustees, acting under the designation of the Puritan Church Building Fund for the sole use and purpose hereinafter more fully set forth, and the Trustees for the purpose of defining the interest of the Beneficiaries of the trust hereby created, in the trust estate to be held by the Trustees, as well as the interests of any person or persons who may at any future date, propose to contribute any sums of money or other things of value into and to become a part of said trust estate, have agreed to issue Certificates of Beneficial Interests in this trust estate to each person having an interest in said trust estate as more fully hereinafter set forth.

NOW, THEREFORE, the Grantor hereby appoints the said Anita Bird and Edith S. Parker to be Trustees, they and their successors to hold such positions during the continuance of this Trust. And the Grantor hereby agrees to forthwith execute and deliver to said Trustees all necessary deeds conveying to said Trustees the real estate hereinbefore described, and the Trustees hereby declare that they will hold said property and all other property or money that may be transferred to them at any time for said trust estate, together with the proceeds thereof, in Trust, to manage and dispose of the

same for the benefit of the holders from time to time of the Certificate of Beneficial Interests issued at any time hereafter, and in the manner and subject to the stipulations and directions herein contained, which are hereby agreed to by the Grantor and the Trustees, to wit:

* * * * * *

SECOND: The Trustees shall have and are hereby given full power and right to employ all the funds and other property at any time belonging to this trust estate, in the establishment of a Puritan Meeting House at La Grange, Illinois. If for any reason the trustees shall deem it unsafe or unsuitable to build a Puritan Meeting House at La Grange, Illinois, then they may build it at any other location in the United States of America which they may deem safe and suitable for such a purpose.

Pending the completion of the necessary fund with which to build the said Puritan Meeting House, the Trustees may invest any money contributed to this trust estate, in securities which are legal for the investment of the funds of insurance companies organized under the laws of the State of Connecticut, United States of America.

* * * * * *

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal in token of his assent to and approval of the terms of the trust herein created, for himself, his heirs and assigns, and the Trustees hereinbefore mentioned, have hereunto met their hands seals in token of their acceptance of the trust herein created, for

themselves and their successors, on the day and year first above written.

..... (Seal)
HARRISON PARKER

..... (Seal)
ANITA BIRD

..... (Seal)
EDITH S. PARKER"

Puritan Church of America v. *Commissioner*, 93 U.S. App. D.C. 129, 209 F. 2d 306, cert. denied 347 U.S. 975."

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No. 868

In the Supreme Court of the United States

OCTOBER TERM, 1968

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, TRUSTEES, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

CARLETON D. KENT,
Assistant to the Attorney General,

L. HEBERT RUTH,
CHARLES B. E. FRIEDMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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In the Supreme Court of the United States

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No. 494

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v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court did not write an opinion. The order of the District Court dismissing the complaint (R. 11-12)[1] is not reported. The *per curiam* opinion of the Court of Appeals is reported at 256 F. 2d 888. (R. 15-16.)

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1958. (R. 17.) Petitioner's mo-

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[1] Record references are to the record filed in this Court.

tion for leave to file petition for mandamus, motion to disqualify, and petition for a writ of mandamus to the United States Court of Appeals for the District of Columbia were denied by this Court on October 13, 1958. Petitioner's time within which to file a petition for a writ of certiorari was extended to November 9, 1958. The petition for a writ of certiorari was filed on November 5, 1958. Jurisdiction is conferred on this Court by 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Was the court below correct in affirming the dismissal of this action by the District Court on the ground of *res judicata?*

STATEMENT

In 1951, in consolidated proceedings, the Tax Court decided that the Puritan Church—The Church of America was liable for income tax for the period October 14, 1945, to December 31, 1945, and for the years 1946 and 1947 (T. C. Docket No. 23814). The deficiencies were determined. In the consolidated companion case (T.C. Docket No. 25701), the Tax Court also decided that the Puritan Church Building Fund (which is the taxpayer here) was liable as a transferee for the deficiencies of the Puritan Church—The Church of America. The memorandum findings of fact and opinion of the Tax Court, dated May 22, 1951, are reported in 1951 P-H T.C. Memorandum Decisions, par. 51,151. Petitions for rehearing were denied on June 22, 1951, and September 27, 1951. The decisions of the Tax

Court were reviewed by the Court of Appeals for the District of Columbia Circuit which affirmed the Tax Court decisions in *Puritan Church of America* v. *Commissioner*, 209 F. 2d 306. A petition for rehearing *en banc* was denied by the Court of Appeals on December 11, 1953. This Court denied certiorari (347 U.S. 975). A motion to vacate its decision was filed in the Tax Court and was denied by the Tax Court on June 23, 1954. On March 1, 1955, the Court of Appeals for the District of Columbia Circuit dismissed the appeal from that denial. This Court denied certiorari (350 U.S. 810), and a rehearing was denied (350 U.S. 890).

In the complaint filed in the District Court which initiated the present suit, petitioner alleged that it was entitled to a refund as a result of the Tax Court's previous decisions. (R. 1-4.) The District Court dismissed the complaint on the ground that the matters raised by the complaint had been decided by the Tax Court in the cited case, its decision affirmed by the Court of Appeals for the District of Columbia Circuit, and certiorari denied by this Court. (R. 11-12.) In a *per curiam* opinion, the Court of Appeals for the District of Columbia Circuit affirmed the District Court's order stating, "The District Court correctly dismissed this action on the ground of *res judicata*," citing *Puritan Church of America* v. *Commissioner*, 93 U.S. App. D.C. 129, 209 F. 2d 306, certiorari denied, 347 U.S. 975. (R. 15-16.) Petitioner's motion for leave to file petition for mandamus, motion to disqualify, and petition for a writ of mandamus to the United States Court of

Appeals for the District of Columbia (No. 320 Misc., October Term, 1958) were denied by this Court on October 13, 1958.

ARGUMENT

The decision below is correct, there are no conflicting decisions and no question of general importance is presented.

This suit involves the same parties or their privies[2] and the same taxable years, *i.e.*, a part of 1945 and the years 1946 and 1947, which were involved in the proceedings cited by the courts below, namely, *Puritan Church Building Fund, Anita P. Bird and Edith S. Parker, Trustees* v. *Commissioner* (T. C. Docket No. 25701), decided May 22, 1951 (1951 P-H T.C. Memorandum Decisions, par. 51,151), affirmed, 209 F. 2d 306 (C.A. D.C.), certiorari denied, 347 U.S. 975. See also the denial by this Court of a petition for certiorari from the dismissal by the Court of Appeals for the District of Columbia Circuit of taxpayer's appeal from an order of the Tax Court denying a motion to vacate its previous decision (350 U.S. 810, rehearing denied, 350 U.S. 890). Plainly there is identity of cause of action and of parties between the instant case and the cited case.

---

[2] That this suit is between the same parties is plain Harrison Parker is a successor trustee to Anita Bird who was a party in the prior proceedings. It is clear that the trustees involved are in privity. See *Stacy* v. *Thrasher*, 6 How. 43, 59-60. It is equally clear that the original proceeding against the Commissioner is considered a suit against the United States for purposes of the doctrine of *res judicata*. *Tait* v. *Western Md. Ry. Co.*, 289 U.S. 620.

and the rule of *res judicata* applies.[3] Contrary to taxpayer's contention (Pet. 3-15), the earlier decision, which was the result of protracted litigation, plainly put an end to any claim that either the Puritan Church—The Church of America or the taxpayer here was exempt from income taxation during the taxable years as a religious organization. The detailed findings made by the Tax Court and its careful opinion (1951 P-H T.C. Memorandum Decisions, par. 51,151) to which the court below referred

---

[3] The assertion in the complaint here that taxpayer is entitled to a refund (R. 1-9) is based upon a misconstruction of the Tax Court's decision. The net deficiency determined by the Tax Court to be due from taxpayer for 1945, 1946 and 1947 was $17,059.09. This is the net balance which the Tax Court found remaining after applying $106,598.24, the proceeds of a jeopardy assessment, to taxpayer's total tax liability for those years. The Tax Court's decision in Docket No. 25701, based on this computation which was made after objection filed by taxpayer and hearing held, reads as follows:

* * * *

> Now, therefore, it is
>
> Ordered and decided: That there are overpayments in income tax, 25% penalty, and 50% penalty for the period October 14, 1945, to December 31, 1945, due petitioner as transferee of Puritan Church—The Church of America, in the amounts of $1,159.00, $289.75 and $579.50, respectively; and that there are overpayments in income tax, 25% penalty, and 50% penalty for the calendar year 1946 in the amounts of $13,132.22, $3,283.05 and $6,566.11, respectively, all of which amounts were paid after the mailing of the notice of deficiency; and there are liabilities on the part of this petitioner as transferee of Puritan Church—The Church of America in income tax of $24,039.27, a 25% penalty of $6,009.82, and a 50% penalty of $12,019.64 for the calendar year 1947, together with interest thereon as provided by law.

(209 F. 2d 306) in affirming the Tax Court make this abundantly clear.

The taxpayer's assertion that the appointment of an Illinois state court receiver for the Puritan Church—The Church of America deprived the Tax Court of jurisdiction in the earlier proceeding is without merit. (Pet. 15-17.) Taxpayer asserts that the receiver was appointed three days before it filed its petition in the Tax Court in Docket No. 25701, and referring to Section 274 of the Internal Revenue Code of 1939 and Section 6871 of the Internal Revenue Code of 1954 contends that the Tax Court was without jurisdiction to entertain this taxpayer's petition for redetermination of the tax. (Pet. 15-16.) On its face this contention is without merit since (1) this taxpayer, Puritan Church Building Fund, was not a party to the proceeding in Illinois, (2) no receiver had been appointed for the Building Fund or its trustees, (3) the receiver for Puritan Church did not take action to obtain possession of this taxpayer's property, and (4) had receivership proceedings been brought the District Director's tax claim would, in any event, have had priority over the claims of general creditors. See Sections 3670, 3671 and 3672 of the Internal Revenue Code of 1939; *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47; *Reinecke* v. *General Combustion Co.*, 237 Ill. App. 404.

In addition, the courts below were plainly correct in ruling that the prior litigation also settled this issue. The income tax liability of a taxpayer for any one year is a single cause of action. The earlier judgment put an end not only to every matter or

issue which was raised and passed upon to sustain or defeat each cause of action litigated, but also put an end to all matters or issues based on each cause of action which might have been raised, but were not. *Tait* v. *Western Md. Ry. Co.*, 289 U.S. 620, 623; *Commissioner* v. *Sunnen*, 333 U.S. 591, 597. See also *Chicot County Dist.* v. *Bank*, 308 U.S. 371, 377-378, and *Jackson* v. *Irving Trust Co.*, 311 U.S. 494, 503. In the case of Tax Court proceedings, Congress has afforded statutory support for this principle. Internal Revenue Code of 1939, Section 322(c), and Internal Revenue Code of 1954, Section 6512(a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

I. HENRY KUTZ,
CHARLES B. E. FREEMAN,
Attorneys.

DECEMBER, 1958.

U. S. GOVERNMENT PRINTING OFFICE 1958 499326 731

No. 494

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, Trustees, *Petitioner*

v.

UNITED STATES OF AMERICA, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S BRIEF IN REPLY TO THE RESPONDENT'S IN OPPOSITION

PURITAN CHURCH BUILDING FUND
REV. HARRISON PARKER
EDITH S. PARKER
Trustees

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---

PETITIONER'S BRIEF IN REPLY TO THE RESPONDENT'S IN OPPOSITION

The Petition for Writ of Certiorari and Respondent's Brief in opposition thereto present questions of much moment.

The arguments advanced by Respondent's brief raise additional issues from those presented to the

Court of Appeals. In its present brief Respondent says:

> "(1) This taxpayer, Puritan Church Building Fund, was not a party to the proceeding in Illinois. (2) No receiver had been appointed for the Building Fund or its trustees, (3) The receiver for Puritan Church did not take action to obtain possession of this taxpayer's property, and had receivership proceeding been brought the District Director's tax claim would in any event, have had priority of the claims of general creditors".

As stated above the Respondent relied on the Doctrine of Res Judicata; The position of Respondent is therefore expanded to include the issues enumerated above.

It has always been the position of Petitioner that the issues are broad and in consequence thereof Petitioner is entitled to a jury trial under the 7th Amendment to the Federal Constitution in order to explore the facts and develop the issues. This Court should grant certiorari in order that a full and complete argument may be had on all the issues. In the light of the facts contained in the petition and the tacit admissions of Respondent, a re-examination of the question of transferee liability under Section 6901 of the Internal Revenue Code, 1954, should be had. It is the purpose of Petitioner, in this Reply Brief, to show hereinbelow the fallacies and untenability of the arguments advanced by Respondent in its brief filed herein.

2. Lack of Jurisdiction of Subject Matter Permits of Collateral Attack on Judgment

Petitioner reasserts that Section 6871 of the Internal Revenue Code, 1954, ousted the Tax Court of jurisdiction. Where a court is without jurisdiction of the subject matter, its judgments are a complete nullity and may be collaterally attacked. *United States* v. *U. S. Fidelity Co.,* 1940, 309 U.S. 506.

3. Puritan Church Building Fund, Transferee, Was a Party to Receivership

Respondent argues that the Petitioner was not a party to the Receivership, therefore, the Receivership was, in applicable to Petitioner. It is conceded, however, that both the Tax Court and the decree oppointing the Receiver, treated Petitioner as a privy of the Puritan Church—the Church of America. See Tax Court decision (1951, P-H T.C. MEMORANDUM DECISIONS, Par. 51,151, and *Kimbrough* v. *Parker,* 344 Ill. 483, 101 N.E. 2d 617.

The decision of the Tax Court holds that Petitioner is a transferee of Puritan Church—the Church of America, and the decree of the Illinois Court gave the Receiver jurisdiction over all assets of the Puritan Church—the Church of America. See, *Mathias* v. *Tegaloff,* 51 A. 2d 654, 187 Md. 690, *Alexander* v. *Hillman,* 296 U.S. 222 and *Albuquerque Nat'l. Bank,* v. *Citizen Nat'l. Bank,* 5 Cir., 212 F. 2d 943.

4. Receiver Failed to Take Action to Obtain Possession

The Respondent says that the Receiver failed to take action to obtain Possession. This argument implies that the jurisdiction under 6871 of the Internal Revenue Code is dependent upon the action

of the Receiver after appointment. The language of the Statute is positive, it says:

> "but no petition for any such redetermination shall be filed with the Tax Court . . . after appointment of the Receiver."

The Statute affords Respondent the right to file its claim with the Receiver. (Sec. 6871(b)). So there is no justification for the argument that the Receiver failed to seek possession of the $106,000.00; when Respondent was equally derelicted in not filing its claim with the Receivers. See, *Cohen* v. *U. S.*; 1 Cir., 115 F. 2d 505, *Kelly* v. *U. S.*, 10 Cir., 90 F. 2d 73, *In re Wolslaged*, (D.C. Ohio) 104 F. Supp. 68 and *In re Kepp Elec. etc.*, (D.C. Minn.), 98 F. Supp. 53

5. Priority of Tax Claims

Respondent further argues that if the Receivership proceeding had been brought it's tax claim was preferred under the law. The answer to this Argument is that it created a feigned issue. The Statute, Section 6871 of the Internal Revenue Code, does not provide for *priority* of Claims or liens. The Statute is designed to afford a forum where claims may be presented and determined when the taxpayer's assets have been placed in receivership.

In support of this feigned issue the Respondent has cited the case of *U. S.* v. *Security Trust & Savings Bank*, 340 U.S. 47. This case holds that a Social Security tax lien filed subsequent to a State's Conditional lien has priority over the latter. The State lien in question was dependent upon a subsequent judgment on the part of the

lienor for its consummation. In the case of *Illinois* v. *Campbell*, 329 U.S. 362, at page 374 this Court makes it clear as to what is necessary to give priority to liens. The determining factor is the decree of the State Court creating the receivership. Here in the instant Petition the decree of the Illinois Court creates a constructive trust and impowers the receiver to collect all assets of the taxpayer wherever located. The decree directed that these assets be returned to the Puzzle Contestants. Under the Illinois decree there were more than $230,000.00 of Puzzle Contest Funds to be returned to the Contestants. The taxpayer was ordered by this decree to turn this money over to the receiver. Under the decision of this Court in the case of *Commissioner* v. *Wilcox*, 327 U.S. 404, these funds were not income and were not subject to taxation.

In the light of the foregoing Petitioner feels that the jurisdiction of this Court is properly invoked. Petitioner asserts that the questions here presented are of such character that a construction of Section 6871 of the Internal Revenue Code should be had by the highest Court of the land. It is to this end that Petitioner addresses itself.

CONCLUSION

The granting of Certiorari will afford both sides adequate opportunity to fully explore all issues and obtain a much needed expression of this Court on the issues presented.

Respectfully submitted,

PURITAN CHURCH BUILDING FUND
REV. HARRISON PARKER
1868 Columbia Rd., N. W.
Washington, D. C.
Trustee

EDITH S. PARKER
1868 Columbia Rd., N. W.
Washington, D. C.
Trustee

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 494

PURITAN CHURCH BUILDING FUND, HARRISON PARKER AND EDITH S. PARKER, Trustees, *Petitioner*

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PETITIONER'S PETITION FOR A REHEARING

PURITAN CHURCH BUILDING FUND
REV. HARRISON PARKER
EDITH S. PARKER
Trustees

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S PETITION FOR A REHEARING

On both sides, this is a bitter 10 year old litigation in the U. S. Courts, over a $326,000. income tax assessment made by the Commissioner of Internal Revenue against the income tax exempt Puritan Church of America, and the seizure by the Government of the United States, of $106,000. cash from the Church's Bible and Building Trust Fund in the custody of the Greenwich Trust Company at Greenwich, Connecticut.

The Supreme Court of the United States denied certiorari. This petition is for a rehearing on that denial.

By rule 58, page 58 of the "Revised Rules of the Supreme Court of the United States effective July 1st 1954," a petitioner for a rehearing is compelled to state "briefly and distinctly" the reason why the Supreme Court should grant the request. Following is a petition for a rehearing, in full compliance with this rule of the court:

In its petition for a Writ of Certiorari filed by the Church in the Supreme Court of the United States, the Church charged:

1—that John W. Burns a U. S. Revenue Agent had defied the authority of the Congress of the United States to grant income tax exemption to all churches in the United States, which had met its requirements in Section 101(6) of the Internal Revenue Code; that the Puritan Church of America had met all those requirements;

2—that despite that exemption, Mr. Burns had assessed a $326,000 Income Tax against the church and had confiscated $106,000.00 cash, in said Church's Bible and Building Trust Fund in the custody of the Greenwich Trust Company, as a part payment on this unconscionable income tax against an income tax exempt Protestant Church: that Mr. Burn's personal income tax assessment against the Puritan Church was void; that the proceedings by the Commissioner against the church were void ab inito;

3—that the Puritan Church had in the income tax exemption granted to it by the Congress, a property right of which it could not be deprived,

except by due process of law; that the void income tax assessment by Mr. Burns against the church, was not due process;

4—that Mr. Burn's law violations in making such an assessment, had been reported by the Church to the Tax Court at Washington, D. C.;

5—that the Tax Court in a decision dated September 28th, 1951 upheld each and every law violation admitted by Mr. Burns;

6—that this decision of the Tax Court had been written by the hoodlum's law firm of Kirkland, Fleming, Green, Martin and Ellis, in the Chicago offices of the hoodlums;

7—that the Tax Court was without jurisdiction to write such a decision; that the decision of the Tax Court was void; that this fraudulent and void decision of the Tax Court was appealed for review, to the United States Court of Appeals for the District of Columbia Circuit;

8—that the Chicago hoodlums had either influenced, intimidated, or bribed the United States Court of Appeals at Washington, D. C., to uphold the law violations of the Tax Court;

9—that the United States Court of Appeals for the District of Columbia Circuit did not have the jurisdiction to review that decision of the Tax Court.

In reply to these serious charges, the government of the United States filed in the Supreme Court of the United States a brief over the signature of J. Lee Rankin, the Solicitor General of the United States; in that brief the Government of the United States admitted the truth of each and every charge stated above.

CONCLUSION

The direct Puritan sires of the petitioner were familiar with the age-old struggle for "equal justice under law." In the Battle of Concord, April 19, 1775, led by the Puritan Captain John Parker, they secured for themselves and posterity, in a written constituion, every right that had been wrested from unnatural power, with the spilling of blood on the field of battle.

This petition for a rehearing is an appeal from the children in the 10th generation born on United States soil of the family of Puritan men which is in direct descent from Deacon Thomas Parker who founded the first Puritan Church at Reading, Mass. in the year 1942, to the Supreme Court of the United States, for the protection for the church of their fathers, of the due process clause in the Constitution of the United States, which was secured for them by the blood of their direct sires spilled on the battle fields of Concord and Valley Forge. (tr. 478)

In this court's pronouncement in the case of *Holland v. United States*, 348 U.S. 121, Justice Clark beheld the peril to our form of government, in income tax assessments computed arbitrarily and capriciously. There, the Court said, inter alia, "While sound administration of the criminal law requires that the net worth—a powerful method of proving otherwise un-

deterable offenses—should not be denied the Government, its failure to investigate leads furnished by the tax payer might result in serious injustices. It is, of course, not for us to prescribe investigative procedures, but it is within the province of the Court to pass upon the sufficiency of the evidence to convict. When the Government rests its case solely on the approximations and circumstantial inference of a net worth computation, the cogency of its proof depends upon its effective negation of reasonable explanation by the taxpayer inconsistent with guilt. Such refutation might fail when the Government does not track down relevent leads furnished by the taxpayer—leads reasonably susceptible of being checked, which, if true, would establish the tax payer's innocence. When the Government fails to show an innvestigation into the validity of such leads, the trial Judge may consider them as true and the Government's case as insufficient to go to the Jury."

The learned Justice in his opinion further said at page 136, that: "This should aid in forestalling unjust prosecutions, and have the practical advantage of eliminating the dilemma, especially serious in this type of case, of accused's being forced by the risk of an adverse verdict, to come forward to substantiate leads which he had previously furnished the Government." While the *Holland* case, *supra*, embaced a criminal income tax prosecution, its reasoning is clearly applicable to the instant case:

In a criminal conspiracy by the Chicago hoodlums to wound the Puritan Church, by the use of a "100% gross bank deposit income tax assessment," the government of the United States requested and received from the Puritan Church, copies of all its bank state-

ments. At that time, all of the churches financial records were tendered by the Puritan Church to the U. S. Government; the government accepted only the "bank statements". (See the undisputed testimony of V. V. Sugg, U. S. Postal Inspector, and Adolph Anderson, cashier of the Montague State Bank, which is abstracted in the Appendix herein).

"These "bank statements" were the property of the Puritan Church; it had paid for their preparation at its bank at Montague, Michigan, and their delivery to Mr. V. V. Sugg, U. S. Post Office Inspector; they were a part of the book-keeping system of the Church; they were loaned by the church to the Government of the United States for honorable use. By these "bank statements" being in the possession of an agent of the Government, the Government of the United States was "on notice" that the Puritan Church had books which were available to the Government. Then, the Government of the United States, all of its agents, all of its courts, including this court, were honor bound, and bound by law, to use those "bank statements" as the Internal Revenue Code limits, and not otherwise.

V. V. Sugg, delivered those "bank statements" to Mr. Looby Assistant U. S. Attorney; he allowed access to those honor bound documents, to John W. Burns, U. S. Revenue Agent; in violation of honor and in violation of the law of the Congress stated in the Internal Revenue Code, he used the sum total of the "deposit" items on the Puritan Churches "bank statements", as his income tax assessment against the income tax exempt Puritan Church; in accepting all the "deposit" items, he arbitrarily and capriciously rejected all the "withdrawal" items in juxaposition on the same "bank statements." In plain English, an agent of

the Government of the United States, in important litigation, "suppressed evidence" in his possession, in order to gain money for the Treasury of the United States.

In a criminal prosecution, where the prosecutor was in possession of evidence which would tend to exonerate the defendant, it was denial of due process of law to such defendant in the withholding of such evidence. See *Al Carta* v. *Texas*, 355 U.S. 28. The $106,000 cash, confiscated to the U. S. Treasury from the Puritan Church Building Fund, upon Mr. Burn's "100% gross bank deposit income tax assessment" was confiscated without due process of law. (See abstract of John W. Burn's undisputed testimony in the Appendix herein)

Had Mr. Burns acted legally and honorably, as all agents of the Government of the United States should, he could have introduced in important litigation, evidence which would have shown the Puritan Church to have been innocent of the charge of fraud always implied in "100% gross bank deposit income tax assessment", and in the "net worth" income tax assessments which offended the sense of justice of this court in *Holland* v. *United States*.

When the undisputed testimony of John W. Burns, also Adolph Anderson and V. V. Sugg was recorded in the United States Tax Court in tax case 25701, there was indelibly in a United States Court record, ample evidence to prove:

1—that the income tax assessment made by Mr. Burns against the income tax exempt Puritan Church was void;

2—that the proceedings of the Commissioner of Internal Revenue based on this void assessment, were void ab initio;

3—that the Puritan Church had been denied due process of law;

4—that the United States Tax Court was without jurisdiction in this litigation.

The Court record in this litigation as it now exists, is a disgrace to the legal profession of the United States; it permits an irresponsible Revenue Agent to make an uneonscionable income tax assessment and "suppress the evidence" to prove that it is wrong. "The power to tax is the power to destroy." Unless it shall be corrected by this court in a rehearing, private property is no longer safe in the United States of America.

Respectfully submitted,

PURITAN CHURCH BUILDING FUND

REV. HARRISON PARKER
Trustee

EDITH S. PARKER
Trustee

CERTIFICATE OF GOOD FAITH REQUIRED BY THE COURT'S RULE. NUMBER 58

Edith S. Parker and Rev. Harrison Parker assert that the above petition for a rehearing, is not made for delay.

EDITH S. PARKER

REV. HARRISON PARKER

APPENDIX

"V. V. Sugg was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

"I am a Post Office Inspector (tr. 239); at the office of the Puritan Church, I told Mr. Parker that it would be necessary for us to examine and analyze the books and records (tr. 267); that it would be necessary for me to check the Puritan Church's balances at its bank (tr. 306); that it would be necessary for me to go to the bank and see how much money had come in and what disposition had been made of it (tr. 306): Mr. Parker said he would instruct the bank to show me the records (tr. 306); I went to the bank; all the Puritan Church's accounts were easily available to me (tr. 306-307); at the office of the Church, Mr. Parker showed me something, like a day-book (tr. 307); he had a book in which he said the daily receipts were posted (tr. 308); I did not ask him to give me the book (tr. 308); the statements he made to me in his office about the accounts were confirmed in the bank accounts which I checked at the bank of the Puritan Church (tr. 309); the attorney for Mr. Parker turned over to me several typewritten sheets of facts with a letter from Mr. Parker stating that this was a complete statement of all the monies that had been received and disbursed (tr. 357); they were weekly statements of clerical expenditure, probably 15 to 30 pages (tr. 359); I saw in Mr. Parker's office a journal which he said was a journal of daily receipts (tr. 359); that journal was available to me (tr. 359, 360); I never again asked to see that book (tr. 360); I requested and received financial records and things like that (tr.

360)." (The "Bank Statements" of the Puritan Church)

"Adolph Anderson, a witness called on behalf of the respondent, being first duly sworn, was examined and testified as follows:

"I am Adolph Anderson, the cashier of the Montague, Michigan (tr. 114); I had a letter from Harrison Parker, Chancellor of the Puritan Church, in which he stated that they were entering into a contract in which they were going to use the United States Mails and that in all probability some inspectors would be at our bank and for us to let them have and see everything that they wanted to see; V. V. Sugg, a U. S. Post Office Inspector, called at our bank at Montague (tr. 137); we showed him anything he asked for (tr. 138)" (In the "Findings of Fact" which determined the decisions of the Tax Court, the Chicago hoodlums who wrote that decision in their Chicago offices, found twice, once at record page 973, and again at record page 995, that:

> "Petitioner kept no adequate books nor adequate records."

The hoodlums were articulate about this "Finding of Fact"; they knew that the testimony of John W. Burns, V. V. Supp and Adolph Anderson in the Tax Court record, made Mr. Burn's "100% gross bank deposit income tax assessment" void, and the proceedings against the Puritain Church by the Commissioner, void ab initio; in an attempt to cover that defect in their criminal conspiracy against the Church, they resorted to a crooked "Finding of Fact," in the decision of the Tax Court.)

"John W. Burns was called as a witness by and on behalf of the respondent, and having been first duly sworn was examined—and testified as follows:

"I am the Internal Revenue Agent who investigated this case (the Puritan Church—the Church of America) (tr. page 181); I had access to the bank statement of the Puritan Church—the Church of America (tr. 194); it showed for the period under investigation, deposits in its bank at Montague, Michigan and at currency exchanges as follows:

$6,500 for period October 14, 1945 to December 1, 1945.

$47,013.54 for the calendar year 1946 (tr. page 182);

$201,502.77 for the calendar year of 1947.

$359,094.03 for the period from January 1, 1948 to June 30, 1948: (tr. 182, 183, 184)

I used the sum total of these deposits as my adjusted income for the Puritan Church and the deficiency notice in this ase (tr. 183); yes, the same bank statement showed steady withdrawals (tr. 194); I went to Mr. Looby, assistant U.S.A. Attorney and asked him if he had information about these withdrawals; he had none (tr. 198); I could not obtain from Mr. Looby the evidence on which I could allow any deductions from my gross bank deposits assessment (tr. 190); in making the jeopardy assessment I was guided by the transfer of approximately $150,000 from the special account at the Montague Bank to the Cos Cob Branch of the Greenwich Trust Company into the account of the Puritan Church Building Fund (tr. 204); I had to rely on the gross bank deposits of the Puritan Church for the figures used in my adjusted income and deficiency notice in this case: (tr. 189); No I did not ask the bank, if it had any

records to show what the withdrawal items on the bank statement were used for (tr. 195); the bank does not have access to the cancelled checks; they are the property of the individual (tr. 195) (in this case the cancelled checks were the property of the Puritan Church—the Church of America); yes I knew where the office of the Puritan Church was at La Grange, Ill. (tr. 191): I never went there to make any requests for records: (tr. 199) I concluded that there would be no point in making a demand for books and records of the Puritan Church (tr. 190); for income tax purposes, I could accept the deposit items on the Puritan's Church's bank statement and reject the withdrawal items on the same statement; this I did (tr. 189); my job, as I understand it, is to protect the revenue of the government; it is my duty to do so (tr. 185)".

"I examined such books and records as the petitioner turned over to me in the court room Friday last (tr. 467); there were books of original entry (tr. 468); detailed ledger sheets, all ledgers in bound form (tr. 469); detailed ledgers for summary purposes (tr. 471); summary sheets for their purpose were bound in ledgers (tr. 470); there were little summary sheets which appeared to be income (tr. 471); miscellaneous papers (tr. 470); pay roll for building funds and other captions (tr. 471); from the books (of the Puritan Church) which are here in the court room I could, if I had sufficient time (tr. 790), make an audit of the Puritan Church from December 1945 to April 7, 1947 (tr. 792)."